



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 3

RIN 2900-AO31

Eligibility of Disabled Veterans and Members of the Armed Forces With Severe Burn Injuries for Financial Assistance in the Purchase of an Automobile or Other Conveyance and Adaptive Equipment

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as a final rule its proposal to amend its adjudication regulation concerning a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment, which was published in the Federal Register on November 5, 2012, and republished for minor technical corrections on November 26, 2012. The amendment is necessary to incorporate statutory changes made by the Veterans' Benefits Act of 2010.

DATES: Effective Date: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

Applicability Date: This final rule shall apply to claims for benefits under 38 U.S.C. 3901 and 3902 received by VA on or after October 1, 2011, and to any such claims pending before VA on that date.

FOR FURTHER INFORMATION CONTACT: Nancy Copeland, Consultant,  
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Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW.,  
Washington, DC 20420, (202) 461-9695. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 803 of Public Law 111-275, the  
Veterans' Benefits Act of 2010, amended subsection 3901(1)(A) of Title 38,  
United States Code (U.S.C.), by reformatting the statute and adding "severe burn  
injury (as determined pursuant to regulations prescribed by the Secretary)" as  
one of the disabilities that VA will consider when making a determination of  
eligibility for financial assistance in the purchase of an automobile or other  
conveyance and adaptive equipment. That statutory change took effect on  
October 1, 2011, and applies to determinations of eligibility for such financial  
assistance on or after that date.

The purpose of 38 U.S.C. 3901 and 3902 is to provide an automobile  
allowance and adaptive equipment to veterans having certain severe disabilities  
that may impair their ability to operate a standard motor vehicle. Prior to the  
enactment of the Veterans' Benefits Act of 2010, the automobile allowance was  
authorized only for the loss or permanent loss of use of one or both hands or feet  
or for permanent impairment of vision of both eyes. In discussing the extension  
of this benefit to veterans with severe burn injuries, the Chairman of the Senate  
Committee on Veterans' Affairs explained that, "[d]ue to the severe damage done

to their skin, individuals with these disabilities experience difficulty operating a standard automobile not equipped to accommodate their disabilities” and that the legislation “would help them obtain vehicles with special adaptations for assistance in and out of the vehicle, seat comfort, and climate control.” 156 CONG. REC. S7656 (daily ed. Sept. 28, 2010) (statement of Chairman Akaka).

In the proposed rule, VA proposed a definition of the term "severe burn injury" and proposed to add that term, as so defined, to VA's regulation identifying the conditions that determine entitlement for a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment. In addition, VA proposed to amend the regulation title and authority citation to add clarity and mirror the statutory provisions of 38 U.S.C. 3901 and 3902. On November 26, 2012, at 77 FR 70389, VA published a minor technical correction that did not substantively change the proposed rule.

We provided a 60-day comment period. Interested persons were invited to submit comments on or before January 4, 2013. We received two comments, both of which supported the proposed rule. VA appreciates these positive comments and makes no changes based on them.

The notice of proposed rulemaking stated that VA will apply this rule to all claims for benefits received on or after October 1, 2011. VA has determined that it would be appropriate to apply this rule also to claims that were filed prior to

October 1, 2011, but have not yet been finally decided. The applicability date summary in this notice, therefore, includes reference to such pending claims and refers specifically to claims for benefits under 38 U.S.C. 3901 and 3902 to indicate the type of claim to which the rule applies.

Therefore, based on the rationale set forth in the proposed rule, published in the Federal Register at 77 FR 66419 on November 5, 2012, and amended for minor technical corrections at 77 FR 70389 on November 26, 2012, we are adopting the proposed rule as a final rule with no changes.

#### Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule will not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

## Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis

can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at <http://www1.va.gov/orpm/>, by following the link for "VA Regulations Published."

### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.013, Veterans Prosthetic Appliances; 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; and 64.109, Veterans Compensation for Service-Connected Disability.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of

the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Interim Chief of Staff, Department of Veterans Affairs, approved this document on July 23, 2013, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: September 16, 2013

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Robert C. McFetridge, Director,  
Office of Regulation Policy and Management,  
Office of the General Counsel,  
Department of Veterans Affairs.



For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

## PART 3 — ADJUDICATION

### Subpart A—Pension, Compensation, and Dependency and Indemnity

#### Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Amend § 3.808 as follows:

- a. Revise the section heading.
- b. Redesignate paragraph (b)(4) as (b)(5).
- c. Add a new paragraph (b)(4).
- d. Revise the authority citation at the end of paragraph (b).

The addition and revisions read as follows:

§ 3.808 Automobiles or other conveyances and adaptive equipment; certification.

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(b) \* \* \*

(4) Severe burn injury: Deep partial thickness or full thickness burns resulting in scar formation that cause contractures and limit motion of one or more extremities or the trunk and preclude effective operation of an automobile.

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(Authority: 38 U.S.C. 3901, 3902)

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09/19/2013]